



July 17, 2012

Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dennis J. McLerran, Regional Administrator
U.S. Environmental Protection Agency, Region 10
Regional Administrator's Office, RA-140
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Re: National Tribal Water Council comments on the draft Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska (Document ID EPA-HQ-ORD-2012-0276-0001)

Dear Ms. Jackson and Mr. McLerran:

The National Tribal Water Council (NTWC) was initiated by the EPA Office of Water to provide a national forum that would facilitate the exchange of water protection expertise among Tribal water professionals and other water protection experts. We would like to offer comments on the recently published external review draft of *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska*.

As background, the NTWC hosted a listening session during the September 2010 Tribal Leaders Summit in Juneau, Alaska, and committed to follow up on specific issues, including providing a letter of support for the native communities in the Bristol Bay region to protect their subsistence salmon fisheries, which we provided to you in January 2011. Although we heard many moving testimonies from tribal members and leaders about the challenges they face, none made such an impact as the concerns raised about predictable impacts from hard rock mining, and the proposed Pebble Mine in particular.

It is clear from comprehensive scope of this assessment project that EPA is committed to bringing the best possible science and information to any future environmental review or regulatory process that may occur in this region. The agency exercised its authority under Clean Water Act §104(a)(b) to study the resources of the Bristol Bay watershed, evaluate the effects of large-scale mining, and make this information available to the public. There is an extensive characterization of the current ecological condition, reasonable descriptions of potential mining

projects, risk assessments for a ‘no failure’ scenario and a ‘failure’ scenario, cumulative and watershed-scale effects of multiple mines operating in the watershed, and integrated risk characterization. But perhaps some of the richest baseline information is included in the multiple appendices: fisheries resources, wildlife, baseline levels of economic activity, and foreseeable environmental impacts of roads, pipelines, and other infrastructure. Most importantly for the Alaska native communities, there is a wide-ranging and inclusive treatment of Traditional Ecological Knowledge (TEK) that should serve as a model for other projects or actions requiring an analysis of impacts to tribal people and resources. We note that, included in this comprehensive assessment process was an independent scientific peer review panel that considered draft ‘charge’ questions in addition to their review of the Watershed Assessment. That all of this was accomplished in such a short timeframe is highly commendable.

Given that this Bristol Bay Watershed Assessment validated Alaska native communities’ grave concerns for protecting this unique and irreplaceable resource, the NTWC again recommends that the U.S. EPA proactively take steps to protect the water quality in Bristol Bay from the proposed Pebble Mine by exercising its authority under Section 404(c), 33 U.S.C. § 1344(c). Under Section 404(c),

[t]he Administrator is authorized to . . . deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

The Administrator may make this determination “with regard to any existing or potential disposal site before a permit application has been submitted to or approved by the [Army] Corps or a state”, and “whenever he determines that the discharge of dredged or fill material is having or will have an ‘unacceptable adverse effect’ on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.” 40 C.F.R. § 231.1(a).

EPA may initiate a determination under Section 404(c) of the Clean Water Act if there is “reason to believe” that an “unacceptable adverse effect” could result from the use of the Nushagak and Kvichak river drainages “for the disposal of dredged or fill material” for the proposed Pebble Mine. 40 C.F.R. § 231.3(a). An “unacceptable adverse effect” is defined as “impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies (including surface or ground water) or significant loss of or damage to fisheries,

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shellfishing, or wildlife habitat or recreation areas.” 40 C.F.R. § 231.2(e).

The NTWC supports our Alaska Native brothers’ and sisters’ request that the EPA act now to recommend that the use of at least the Nushagak and Kvichak River drainages be withdrawn from consideration for the disposal of dredged or fill material, because there is adequate reason to believe that an “unacceptable adverse effect” could result from the proposed Pebble Mine. An “unacceptable adverse effect” could result because: (1) the large size of the proposed Pebble Mine is unprecedented; (2) the geochemistry of the orebody shows that it has significant acid generating potential; (3) the location of the proposed mine is at the headwaters of the world’s premiere commercial, sport-, and subsistence salmon fisheries; (4) the huge quantity of potential mine waste (ten billion tons) to be disposed of in the wetlands, lakes, streams, and rivers of the Nushagak and Kvichak River drainages; and (5) the track record of the majority of large hardrock mines, especially sulfide mines, is to violate water quality standards when such violations were predicted not to occur.

Further, the NTWC requests that EPA determine that the Nushagak and Kvichak river watersheds be characterized as aquatic resources of national importance (“ARNI”), under the Memorandum of Agreement (“MOA”) reached by the EPA and the U.S. Army in 1992 pursuant to Section 404(q) of the Clean Water Act, 33 U.S.C. §1344(q). As Alaska Native communities, including the Bristol Bay Native Corporation, have clearly established, these watersheds provide significant values related to sustaining a critical commercial and culturally important subsistence fishery, biodiversity, and downstream water quality. Your agency’s comprehensive assessment of the Bristol Bay watershed certainly confirms its existing exceptional ecological condition and cultural significance. These resources are nationally and internationally significant, and their designation as ARNI is appropriate under 40 C.F.R. §§230.40-45 and applicable precedent.

The 1992 MOA between the EPA and the Army provides for the elevation of individual permit cases for Department of the Army review when the project, within the scope of impacts evaluated by the Army Corps, will result in unacceptable adverse effects to aquatic resources of national importance. The types of resources that can be elevated as ARNIs are resources of concern under Section 404(c) of the Clean Water Act, which are identified as special aquatic sites in 40 C.F.R. §§230.40-45. Protection of special aquatic sites is a high national priority for the EPA:

From a national perspective, the degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by these Guidelines. The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources. 40 C.F.R. §230.3(q-l).

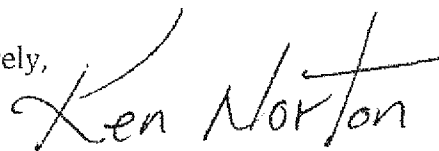
Special aquatic sites may be large or small geographically, so long as they possess “special ecological characteristics of productivity, habitat, wildlife protection or other important and

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easily disrupted ecological values” These areas “are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region.” 40 C.F.R. §230.41(b).

The NTWC appreciates EPA’s initiative to establish the baseline ecological condition and cultural significance of the Bristol Bay watershed, and looks forward to a recommendation from EPA under Section 404(c) of the Clean Water Act for the Nushagak and Kvichak River drainages.

Sincerely,

A handwritten signature in black ink that reads "Ken Norton". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Ken Norton, Chairman

Ex. 6 PII, Ken Norton

(530) 625-5515, ext. 303